Criminal Revision No. 458 of 2001
(Old No. 1680/1986)
Hon'ble Irshad Hussain, J.

Sri D.C.S. Rawat holding brief for Sri L. Dobhal, learned counsel for the revisionist. None appeared for the respondent no. 2. Efforts were made to serve notice on her but as per the report of the CJM, she is not traceable on the address as was given. Her village people also reported that her whereabouts are not known.

Heard learned counsel and the learned A.G.A. and peruse the record. The learned counsel for the revisionist submitted that the respondent no. 2 was residing separately from him in view of the respondent no. 2 having married one Prem Ballabh of Pareri Patti, Pithoragarh and was residing with that person as his wife. The application to this effect with affidavit was submitted before the court by the revisionist. It is also evidence that certificate was issued by the Gram Pradhan indicating that said fact is correct and the respondent no. 2 and Prem Ballabh were living together as wife and husband and their names were also entered as such in the family register of the village maintained by him. The certificate was issued in the year 1998.

Further, this fact was also stated in the objection by the revisionist before the learned Magistrate who did not find the claim reliable. Considering the certificate of the pradhan, the allegation of the revisionist was justified and at any rate the respondent no. 2 was keeping herself away from the revisionist without any sufficient reason and was residing with someone else.

Considering this, the respondent no. 2 was not entitled to claim maintenance as invisaged under the provisions of the 125 Code of Criminal Procedure. This glaring aspect of the matter having not being considering by the learned Magistrate there are cogent reasons to interfere with his finding and impugned order, which is liable to be set aside.

In view of the above, the revision is allowed. The impugned order dated 5.9.1986 is set aside and the application under Section 125 of the Code of Criminal Procedure preferred by the respondent no. 2 and registered as case no. 1/1986 before the then Judicial Magistrate, Pithoragarh is rejected.

(Irshad Hussain, J.)

Dated 23.10.2003
Rawat